

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INVESTMENT PROPERTY REALTY GROUP,
LLC;

Plaintiff,

v.

BLOCK REAL ESTATE GROUP LLC, SEAN
MASHIHI, GABRIEL KATES, DANIEL
SHAWAH, and SERGE SARKISIAN,

Defendants.

22-cv-_____

**DECLARATION OF DEREK S.
BESTREICH IN SUPPORT OF
PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

DEREK S. BESTREICH makes the following declaration under 28 U.S.C. § 1746:

1. I am President of Plaintiff Investment Property Realty Group, LLC (“IPRG”). The evidence set forth in this declaration is based on my personal knowledge except for matters expressly stated to be based on information and belief; in which case the source of my information, and the grounds for my belief, are my personal involvement in matters alleged in the Verified Complaint, my review of documents related to matters alleged in the Verified Complaint, my supervision of others, and my conversations with individuals related to matters alleged in the Verified Complaint.

2. I respectfully submit this declaration in support of IPRG’s Motion for Temporary Restraining Order and Preliminary Injunction against Defendants Block Real Estate Group LLC (“Block”) and Block’s principals Sean Mashihi (“Mashihi”), Gabriel Kates (“Kates”), as well as Defendants Daniel Shawah (“Shawah”) and Serge Sarkisian (“Sarkisian,” and collectively “Defendants”).

Background

3. IPRG is a commercial real estate broker specializing in New York in multifamily, mixed use and development site investment sales, which was initially founded as Bestreich Realty Group LLC (a/k/a “BRG”), formed by a group of brokers that initially worked at large national brokerage. BRG changed its name and currently operates under the name Investment Property Realty Group LLC since July 2022.

4. Mashihi, Kates and Shawah were previously engaged by IPRG as sales associates or brokers. Each regularly relied on IPRG’s proprietary, confidential, and trade secret information, including the SID, to perform their duties as IPRG brokers.

5. Mashihi worked as an IPRG broker from February 22, 2021 until June 30, 2022, when he resigned. Mashihi focused primarily on multifamily and mixed-use properties while with IPRG.

6. Defendant Kates worked as an IPRG broker from December 7, 2017 until July 6, 2022, when he resigned along with Defendant Mashihi. Kates’s primary focuses at IPRG were multifamily, mixed-use, and development site properties.

7. Upon information and belief, Defendants Mashihi and Kates formed a competing commercial real estate brokerage, Block, on May 17, 2022, while they were still engaged as brokers by IPRG.

8. Defendant Shawah worked as an IPRG broker from January 2, 2019 until October 3, 2022, when he, too, resigned from IPRG, by verbally informing IPRG’s principals as soon as they arrived at the office of his intent to leave and begin working for IPRG competitor Lee & Associates. Shawah covered multifamily, mixed-use, and development site properties.

9. Defendant Sarkisian was employed as an Investment Analyst with IPRG from March 8, 2016 until he was involuntarily terminated on October 13, 2022, following discovery of his wrongdoing as described herein. As an Investment Analyst, Sarkisian was responsible for curating the SID and organizing and exporting data for use on IPRG marketing blasts. Sarkisian was primarily responsible for data entry, data integrity, and data maintenance for the SID.

10. I have reviewed and verified the October 19, 2022 Verified Complaint (the “Complaint” submitted at the same time as this Declaration. Attached to the Complaint:

- a. As **Exhibit 1** is a true and accurate copy of the fully executed February 22, 2021 Sales Associate Independent Contractor Agreement between Sean Mashihi and Bestreich Realty Group LLC.
- b. As **Exhibit 2** is a true and accurate copy of the December 12, 2017 Sales Associate Independent Contractor Agreement between Gabriel Kates and Bestreich Realty Group LLC. Kates accepted this agreement by dating under his printed name and return to us.
- c. As **Exhibit 3** is a true and accurate copy of the fully executed January 2, 2019 Sales Associate Independent Contractor Agreement between Daniel Shawah and Bestreich Realty Group LLC.
- d. As **Exhibit 4** is a true and accurate copy of the fully executed March 8, 2016 Confidentiality and Inventions Agreement between Serge Sarkisian and Bestreich Realty Group LLC.
- e. As **Exhibit 5** is a true and accurate copy of the Bestreich Realty Group, LLC Policy Manual: Independent Contractor Sales Associates, which was and is maintained in our regular course of business, and which was

disseminated to each all of our independent contractors including Mashihi, Kates, and Shawah.

f. As **Exhibit 6** is a true and accurate copy of the Bestreich Realty Group, LLC Policy Manual: Employees, which was and is maintained in our regular course business, and disseminated to Sarkisian, who acknowledged receipt on June 24, 2016.

11. This Declaration is not intended to be a comprehensive description of all relevant facts and supplements the facts laid out in the Verified Complaint.

IPRG's Shared Information Database ("SID")

12. The ultra-competitive commercial real estate market in New York City is driven by information. The brokerages with the best information win business.

13. A central component of IPRG's business model is founded upon a compilation of database we have carefully constructed in the form of a shared information database (the "SID").

14. The SID is built on a Salesforce® platform and draws from data hosted on IPRG servers both on-site and in the cloud, among other sources.

15. IPRG has employed two full-time staff (including Sarkisian), four outsourced data analysts, a third party architect consultant, and an IPRG executive in a supervisory capacity to build, maintain, update and process the SID data, pouring in over \$1 million to create this database over many years.

16. This is not merely a collection of information but a highly sophisticated data set that we updated with fresh information from of sources which cannot be replicated by third parties. The data is constantly mined by data analysts, and 20-30 full time agents collecting market impressions to ensure accuracy of the data.

17. This data includes a compilation of clients and their preferences, as well as valuable owner contact information. In the real estate industry, the title owner is often an entity or series of entities, whose actual individual decisionmakers cannot be readily ascertained through searchable public sources. Using years of research, the SID contains information-end decisionmakers with contact information, allowing our brokers to communicate with both owners and potential buyers easily with information readily available to them.

18. The SID also includes private broker notes and intelligence on owner and buyer preferences.

19. Not only is the SID a compilation of unique data, but it is processed and organized in a very user-friendly way to maximize the efficiencies of our brokers in targeting deals, reaching buyers and sellers, and ultimately render transactions. With the use of raw data in the SID, IPRG can slice up data sets to narrow targets for particular transactions (e.g., parties interested in multifamily investments versus development, or parties to a “1031 exchange” looking to do a deal within a narrow period). The customization combined with the quality of our data gives us a significant advantage over competitors in bringing transactions to fruition.

20. Many of the properties, in addition to our proprietary internal data, contain convenient links to both subscription-based and public data that a broker would want to reference in contacting and communicating with an owner. Compiling this information in one place maximizes efficiency and yields significantly increased profits for IPRG over time.

21. The SID includes also a client relationship manager (“CRM”) which tracks clients and potential client interactions, and information and can be used to disseminate potential property sales, recent successes, or other marketing information to targeted audiences generating meaningful business. The SID also includes information on the entire organization’s deal pipeline

and deal stage from pre-proposal, to listing, to off market, to in-contract, and to the closure of the deals, for use by current and former owners. Moreover, the SID contains extensive buyer history, properties offered on, real estate owned, buyer profile and asset types of interest.

22. With its SID, IPRG brokers who get a listing have the cutting-edge, insider, information they need to make a sale. The value of this information depends on its confidentiality and use by IPRG personnel only.

23. The SID is not only a key operational resource, but we use this unique tool to recruit new brokers to join our platform.

24. Most IPRG personnel—including rank-and-file brokers and agents like Mashihi, Kates and Shawah—do not have access to the raw SID data exports, and instead interface with the information through a SalesForce platform, which provides limited access to teams based on the geographic segment that team services. Two factor authentication is needed even to access this limited interface.

25. IPRG personnel responsible for database operations, like Sarkisian, have access to SID and the ability to export raw excel data to carry out their regular functions.

26. Both IPRG's computer networks and physical office are safeguarded by network passwords, physical locks, and a 24-hour security system, among other measures.

Defendants' Data Breaches and Solicitations

27. Last week, IPRG learned that Mashihi and Kates were reaching out to IPRG agents to solicit them to leave IPRG and to join Block.

28. I was informed that Block, through its principals Mashihi and Kates, was enticing IPRG employees to join Block by representing that Block possessed IPRG's SID data, and that Block was using IPRG's SID data to target clients.

29. At least one IPRG broker, Kyle Katz, left IPRG for Block.

30. Block has sold at least one transaction that IPRG previously was actively brokering, before the transaction was sold through Block.

31. Upon information and belief, Block, Mashihi, and Kates have brokered the sale of multiple properties using IPRG's confidential and trade secret information, including the SID, and are actively marketing and selling properties using this information, and targeting properties identified through use of the SID.

32. I was also informed that Sarkisian was "selling" IPRG's SID data to departing broker Shawah, Kates and Mashihi. and that Sarkisian had previously provided IPRG's SID data to Mashihi and/or Kates.

33. Immediately upon learning of these potential data breaches, contract violations, and other ongoing legal violations, IPRG launched an investigation.

34. On October 12, 2022, I questioned Sarkisian about his involvement in these matters. Sarkisian admitted he had provided IPRG's data to Mashihi, Kates, and Shawah, but claimed he thought the data transfers were routine requests, and that he had sent the data using his IPRG email address. Sarkisian also admitted he maintained a social relationship with Kates, and that he regularly socialized with Kates after they departed IPRG—including as recently as the evening of October 11, 2022, when they were "watching movies and playing video games" together.

35. IPRG reviewed Sarkisian's IPRG emails, and found no evidence that Sarkisian had transferred the data to Mashihi, Kates, and Shawah using his IPRG email address, as Sarkisian has represented.

36. IPRG also analyzed files downloaded on Sarkisian's computer which, combined with an audit trail in consultation with our IT team, SalesForce contacts and our third-party

database architect, revealed a series of downloads of IPRG’s SID data that Sarkisian had hidden from IPRG. These downloads coincided with the departures of Mashihi, Kates, and Shawah.

37. A true and accurate copy of an image taken October 12, 2022 reflecting Excel spreadsheets Sarkisian had downloaded and opened is annexed as **Exhibit A**.

38. The downloads reflected in Exhibit A are outside the normal course of Sarkisian’s business activities and role for IPRG, include defined fields to maximize materiality and utility of the complete SID data set, and there was no legitimate purpose for Sarkisian to download these files, in this nature, during these periods.

39. Exhibit A reflects downloads of Excel spreadsheets containing IPRG’s SID data, including the entire CRM for all properties, and mailing lists containing targeted client contact information dated June 28, 2022 (a few days before Mashihi and Kates departed IPRG), October 3, 2022 (the day Shawah informed IPRG he was departing), and September 7 and September 30, 2022 (around the same time that we believe Block, through Mashihi and Kates, began soliciting IPRG’s employees and representing that Block possessed IPRG’s SID data).

40. Exhibit A also reflects that at least one of the Excel spreadsheets was downloaded to a “D:” drive; IPRG does use a “D:” drive internally, indicating that Sarkisian used an external drive, like a thumb drive, to transfer the data—not his IPRG email address, as he claimed.

41. Exhibit A also reflects that Sarkisian downloaded IPRG’s data to folder called “Private Wedding Photos.” Upon information and belief, Sarkisian is single, lives with his parents, and has never been married. IPRG’s investigation revealed there are no folders entitled “Private Wedding Photos” on Sarkisian’s computer, further indicating that Sarkisian downloaded the Excel spreadsheets to an external drive.

42. Exhibit A also reflects that Sarkisian accessed the Excel spreadsheets containing IPRG's data on October 3, 2022 between 7:48 a.m. and 7:52 a.m.

43. IPRG maintains data about employees' usage of key fobs to access IPRG's secured office. A true and accurate copy of the key fob access data for October 3, 2022 is annexed as **Exhibit B**. Exhibit B reflects that on October 3, 2022, Sarkisian used his key fob to enter IPRG's office at 6:33 a.m.

44. Sarkisian was an employee with set hours from 9:00 a.m. to 5:00 p.m. In his regular course of conduct, Sarkisian did not arrive at the office substantially earlier than 9:00 a.m.

45. IPRG terminated Sarkisian on October 13, 2022.

46. Several days after IPRG's counsel served a cease and desist letter on Shawah, I received an email blast sent to my personal email address from Lee & Associates, announcing that Shawah had joined Lee & Associates. A true and accurate copy of this October 17, 2022 email blast is attached as **Exhibit C**. As an owner of a private residence in New York, my name and personal email address are contained in IPRG's SID. An IPRG client confirmed to IPRG that the client had also received the email blast from Shawah reflected in Exhibit C. IPRG's client's name, contact information, and property affiliation are not publicly available, so it is highly unlikely the client's information was acquired by Shawah outside of IPRG's SID. These occurrences, and their timing, indicates Shawah has already uploaded IPRG's SID data to Lee & Associates' systems, and then used IPRG's data to engage in marketing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 19, 2022.



Derek S. Bestreich